

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2408 of 1997

For Approval and Signature:

Hon'ble THE ACTING CJ R.A.MEHTA and
MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

GARDEN SILK MILLS LTD

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR JP SHAH for Petitioner

MR MIHIR JOSHI WITH MR MANISH R BHATT for Respondent No. 1

CORAM : THE ACTING CJ R.A.MEHTA and
MR.JUSTICE N.N.MATHUR

Date of decision: 14/08/97

ORAL JUDGEMENT (R.A.Mehta, Actg.CJ)

Leave to amend so as to challenge the order which is placed on record of the case.

2. Rule. Mr Manish R.Bhatt waives service of rule on behalf of the respondent.

3. The learned counsel for the respondent has raised a preliminary objection that against the impugned order there is an alternative remedy of regular appeal and therefore, the High Court should not entertain this petition against the impugned order.

As far as the questions raised in the petition are concerned, except for one point, this objection is valid. But the assessment on the ground of double deduction cannot be sustained in view of the fact that the said question has been repeatedly concluded by different authorities right from Lakhanpal's case.

The question of double deduction has been raised by the Department repeatedly and recent is the order of the Supreme Court dated 16th July, 1997 in SLP (Civil) No.5194-5195/97 where Special Leave Petitions of the CIT Surat are dismissed. There the contention raised by the Income Tax Department was that Lakhanpal National Ltd's case was distinguishable and the principle of valuation of closing stock had not been decided and adjudicated upon. It was also contended that the claim of deduction of the amount of excise and customs duty embedded in the value of the goods forming part of the closing stock amounted to double deduction by firstly debiting the entire amount of such duties paid in the accounts and thereafter claiming part of the duty paid as deduction in the computation of income by reducing the value of the closing stock. This very contention has been repeatedly raised by the Department and negative by the authorities and the Supreme Court.

4. In that view of the matter, the impugned order on this count cannot be sustained and that part of the order is quashed and set aside. The directions contained in para 16 of the impugned order directing disallowance of assessee's claim of deduction under section 43B are also set aside.

For the other grounds, we do not entertain this petition leaving the petitioner to avail alternative remedy by way of appeal.

The petition is disposed of accordingly. Rule is made absolute to the aforesaid extent.

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